

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

In re: BRIDGESTONE/FIRESTONE, INC.,	:	Master File No. IP 00-9373-C-B/S
ATX, ATX II AND WILDERNESS TIRES	:	
PRODUCTS LIABILITY LITIGATION	:	MDL No. 1373
_____	:	
	:	(centralized before the
THIS DOCUMENT RELATES TO ALL	:	Honorable Sarah Evans Barker)
ACTIONS	:	
_____	:	

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION  
TO COMPEL PRODUCTION OF DOCUMENTS BY  
DEFENDANT FORD MOTOR COMPANY**

## I. INTRODUCTION

The documents sought by Plaintiffs' First Request For Production include materials relating to design deficiencies of the Ford Explorer; Ford's knowledge of these problems; Ford's communications concerning Firestone tires; Ford's knowledge of under-inflation and other issues raised by the use of Firestone tires on Explorers; and Ford's and Firestone's consideration of the use of nylon cap plies in tires -- all issues highly relevant to class certification. Ford has served deficient responses to the requests seeking these documents.

Instead of agreeing to produce all responsive documents, Ford refers Plaintiffs to its electronic document depository at <<http://www.forddocs.com>> or to a set of CD-ROMs containing a subset of the depository. According to Ford, the electronic depository is a work in progress, meant to hold documents that Ford has unilaterally selected as relevant to this litigation, and to which more documents are added as Ford's review of its files continues. Thus, the depository comprises a limited universe of documents that meet a standard of relevance known only to Ford, not all files reasonably likely to contain responsive documents. By serving responses that restrict its production to the depository, Ford violates its obligation under the federal rules to produce all responsive documents and this Court's March 15, 2001 Order Regarding Document Production. Plaintiffs have searched the depository and confirmed that Ford has in fact failed to produce all responsive documents.

Furthermore, for many of the requests at issue, Ford refers Plaintiffs to the electronic depository or the CD-ROMs without supplying the Bates numbers of the responsive documents. Ford's failure to do so (or, in the alternative, to give Plaintiffs a highly detailed, word-searchable electronic index of all documents in the depository) further violates the Court's Order Regarding Document Production.

Moreover, Ford claims it has already prepared a privilege log listing documents withheld under claims of privilege, but has not yet given it to Plaintiffs.

Therefore, the Court should order Ford to produce all responsive documents wherever located; for each document request, to give Plaintiffs the Bates numbers of all responsive documents; and to give Plaintiffs its privilege log.

II. BY RESTRICTING ITS PRODUCTION TO THE ELECTRONIC DOCUMENT DEPOSITORY, FORD SHIRKS ITS OBLIGATION TO PRODUCE ALL RESPONSIVE DOCUMENTS AND VIOLATES THE COURT'S ORDER REGARDING DOCUMENT PRODUCTION.

In February 2001, Plaintiffs served Ford with their First Request For Production. The requested documents include these:

1. All materials with respect to the suspension design, stability, and cost/benefit analysis of the PN38.
2. All materials related to Ford's analysis of Firestone's adjustment data and/or claims data, including the underlying data given to Ford by Firestone.
3. Claims or lawsuits filed against Ford to recover for personal injuries or wrongful death allegedly received or suffered as a result of the negligent design, manufacture, or defective nature of the subject vehicle or tires.
4. All materials with respect to All materials with respect to Ford'sAll materials with respect to Ford's includingincluding including Failureincluding Failure including Failure Analysisincluding Failure A avoidance,avoidance, avoidance, maneuverabilityavoidance, maneuverability avoidance, maneuver
5. AA A completeA complete A complete listA complete list A complete list ofA complete list of A c employees;employees; employees; NHTSA;employees; NHTSA; employees; NHTSA; oremployee
6. WarrantyWarranty Warranty claimsWarranty claims Warranty claims analysis,Warranty claims ana I,I, I, II,I, II, I, II, orI, II, or I, II, or III,I, II, or III, I, II, or III, CQISI, II, or III, CQIS I, II, or III, CQI andand and claimsand claims and claims analysisand claims analysis and claims analysis regardinga subjectsubject subject tiresubject tire subject tire orsubject tire or subject tire or tires,subject tire or t Explorer'sExplorer's Explorer's impactExplorer's impact Explorer's impact avoidance,Explorer's imp
7. CopiesCopies Copies ofCopies of Copies of allCopies of all Copies of all computerCopies of all co anyany any andany and any and allany and all any and all computerany and all computer any and al

8. All proposals or suggestions from any company suggesting the tire or tires, suspension risks.
9. Any Product Change Request, Product Direction Letter ("PDL"), documents concerning potentially critical product problems and possible compliance problems, or documents concerning deviation from Engineering Requirements regarding the (i) subject tires, (ii) suspension, or (iii) steering with respect to the 1990 through 1998 Explorer.
10. All materials with respect to rental companies; tire rental companies; tire rental claim caused thereby, claim caused thereby, claim caused thereby, ATX, ATX, ATX, and ATX, and ATX, and ATX II ATX, and ATX fleet or rental fleet or rental agency fleet.
11. All documents, including All documents, including All documents, including status reports, status reports, status reports, memoranda, status reports, memoranda, status reports, about discussions, about discussions, about discussions, meetings, about discussions, meetings, Bridgestone (the Bridgestone (the Japanese Bridgestone (the manufacturer, manufacturer, manufacturer, distributor, manufacturer, distributor, Tennessee.
12. All materials with respect to ASP, Automotive Technical Center, including the Final Report of Critical Sliding Velocity Testing on the Explorer, Test Numbers B180196, B180207, B180209, B180210, B180223, B180224, B180225, B190019, B190020, B180189, B180191, B180219, B180220, and B190015, prepared for Ford by Autoliv ASP, Automotive Technical Center.
13. The entire files of Ford tire personnel Jim Avouris, Ron Campbell, Charles White, and Roger F. Stornant.
14. Memoranda and other documents identified by date and/or highly detailed content description in Plaintiffs' First Request For Production, e.g., the Ford internal memorandum dated June 11, 1987 concerning a meeting with Firesone and Ford's approval of the ATX tire design (sought by request 79).
15. All unredacted meeting minutes of management or engineering committees who considered the Explorer or its alternative designs between 1987 and 1999.
16. Documents relating to a March 22, 2000 Firestone survey of 243 tires on 63 vehicles that were trade-ins or lease return vehicles showing that 31% of the 15" tires were under-inflated and that 51% of the 16" tires were under-inflated and that 9 tires had less than 20 psi.

17. All communications, written or electronic, including archived voice mails, between or among any Ford entity or representative, Firestone entity or representative, or Bridgestone entity or representative concerning or relating to tire separations or tread or belt separation defects or problems in Firestone ATX, ATX II, or Wilderness tires during the period from 1989 through the present.
18. Documents reflecting and discussing testing or analyses related to cap plies, nylon caps, nylon safety belts, or nylon overlays.
19. All documents relating to cost or cost/benefit analysis performed by Ford relating to the decision to replace the subject tires anywhere in the world.
20. Documents that reflect and describe any and all adjustments and claim rates related to the subject tires and all other light-truck tires produced by Ford, Firestone, or Bridgestone.
21. Any mutual defense agreements or indemnity agreements between Firestone, Ford Motor Company, and Bridgestone Corporation or Bridgestone/Firestone, Inc.

Among other things, the documents relate to design deficiencies of the Ford Explorer; Ford's knowledge of these problems; Ford's communications concerning Firestone tires; Ford's knowledge of under-inflation and other issues raised by the use of Firestone tires on Explorers; and Ford's and Firestone's consideration of the use of nylon cap plies in tires. Such matters, in turn, are relevant to class certification. For instance, class certification of the claims against all Defendants would be supported by documents showing that the fundamental design of the Explorer suffers from atypical instability in turns and other maneuvers, that Ford and Firestone knew the tires at issue here, including those mounted as original equipment on Explorers, have an unusual propensity to shed their treads; or that Ford knew the danger of tread separation with Explorer-mounted Firestone tires was significantly increased by its inflation recommendation for the tires.

On April 30, 2001, Ford served its Response To Plaintiffs' First Request For Production. Despite their importance to class certification, Ford has not agreed to produce all documents responsive to the requests at issue. Instead, Ford tells Plaintiffs to find responsive documents by

searching the electronic depository at <<http://www.forddocs.com>> or a set of CD-ROMs containing a subset of the depository relating to Explorer design and development. In response to some of the requests, Ford claims it will search the depository for responsive documents and place them in their own electronic "folder" on the Website. Attached hereto as Exhibit A is a chart describing the documents at issue, citing individual requests to which they are responsive, and summarizing Ford's responses to the requests. In case the Court wishes to see the responses verbatim, attached hereto as Exhibit B are copies of the Preliminary Statement to Ford Motor Company's Response To Plaintiffs' First Request For Production and Ford's responses to the requests cited in Exhibit A.

By restricting its production to the electronic depository, Ford shirks its obligation to produce all responsive documents. The depository does not comprise all Ford files reasonably likely to contain responsive documents. Rather, the depository is a limited universe of materials, chosen by Ford not for their responsiveness to particular document requests propounded by Plaintiffs, but according to some standard of "relevance" known only to itself. Ford says that it is searching for "documents pertaining to matters at issue in these MDL proceedings and other individual litigation arising as a result of the recall. As these documents are reviewed, relevant non-privileged and non-work product protected documents are being placed in Ford's Document Depository . . . ." (Ex. B, at 1-2.) "Documents responsive to one or more of these Requests may be included in the documents presently located in the Ford Document Depository. In addition, Ford's Document Depository continually is updated as documents are gathered and processed." (Id. at 2.) "In addition, during the course of responding to discovery in Explorer rollover litigation, Ford has located over 100,000 pages of documents relating to the design and development of all model series of the Explorer." (Id. at 28.) "Ford agrees to produce to

Plaintiffs this Explorer Collection. . . . Ford will make available the seven CD-ROMs for the Explorer Collection." (Id. at 29.)

Thus, while Ford creates the impression that it is giving Plaintiffs access to a lot of stuff, in fact Ford ducks the question of whether it will produce all responsive documents, which is the ultimate goal of Plaintiffs' document requests. For none of the categories at issue does Ford simply come out and say that it will conduct a diligent search for documents and produce everything responsive. Nothing justifies Ford's restricting its search to the electronic depository. Indeed, in its March 15, 2001 Order Regarding Document Production, the Court stated, "While the magistrate judge commends Ford for this effort [in creating the depository], the fact remains that the creation of the electronic document depository does not satisfy Ford's obligations under the Federal Rules of Civil Procedure." (Id. at 3.) Furthermore, nothing justifies Ford's telling Plaintiffs to search the depository or CD-ROMs for responsive documents. (See id. at 3-4 (rejecting "Ford's proposal . . . that the plaintiffs use the electronic document depository's search function to search for and identify responsive documents).)

To check the adequacy of Ford's discovery responses, Plaintiffs have searched the depository and confirmed that Ford has not produced all documents falling into the categories at issue. Accordingly, for each of the categories, the Court should order Ford to diligently search all files where such documents are reasonably likely to be found, produce all responsive documents, and give Plaintiffs written confirmation of the search and production.

Category 15 (minutes of management or engineering committee meetings that considered the Explorer or alternative designs between 1987 and 1999) merits further discussion. While covered by requests 1-16, 19-21, 23-24, 32, 34, 42, 49, 53-56, 59-61, 63-64 and therefore discoverable for that reason, Ford also agreed to produce these documents in an individual state-

court Explorer case for use in this MDL litigation. Ford has not yet produced the documents, and should be ordered to do so.

III. BY FAILING TO GIVE PLAINTIFFS THE BATES NUMBERS OF RESPONSIVE DOCUMENTS, FORD VIOLATES THIS COURT'S ORDER REGARDING DOCUMENT PRODUCTION.

In addition, for many of the requests at issue, Ford refers Plaintiffs to the electronic depository or the CD-ROMs without supplying the Bates numbers of the responsive documents.

This Court's Order Regarding Document Production says:

- 1(a). Ford shall respond to each document request with a list of all responsive documents, identified by Bates number;

OR

- 1(b). Ford shall provide plaintiffs with a readily-printable and word-searchable index of each document which is contained in the electronic document depository. The index shall identify the following for each document: . . . .

(Id. at 2.)

Ford has failed to give Plaintiffs the Bates numbers of all documents responsive to each document request or, in the alternative, the specified index of all documents in the depository. Thus, in addition to producing all documents in the disputed categories, Ford should be ordered to give Plaintiffs the Bates numbers of those documents or the depository index.

IV. FORD SHOULD GIVE PLAINTIFFS ITS PRIVILEGE LOG IMMEDIATELY.

In response to document request 72, which seeks communications between Defendants or between any of them and any manufacturer, distributor, or assembler of the subject tires in Tennessee, Ford says it has prepared a log of documents withheld under claims of privilege. Although it claims the privilege log is ready, Ford has not yet given the log to Plaintiffs. The Court should order Ford to do so immediately.



V. CONCLUSION

Therefore, the Court should order Ford to diligently search all files where the documents described above are reasonably likely to be found, produce all responsive documents, and give Plaintiffs written confirmation of the search and production. In addition, the Court should order Ford to give Plaintiffs the Bates numbers of all responsive documents or the depository index offered as an alternative by the Court's March 15, 2001 Order Regarding Document Production. Moreover, the Court should order Ford to give Plaintiffs its privilege log immediately.

DATED: May 14, 2001

Respectfully submitted,

**COHEN & MALAD, P.C.**

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PRODUCTS LIABILITY LITIGATION	)	Master File No. IP 00-9373-C-B/S
	)	
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This Document Relates to All Actions

**CERTIFICATE OF SERVICE**

The undersigned Plaintiffs Liaison Counsel certifies that a copy of the foregoing document was served via hand delivery or facsimile upon the following local counsel for the Defendants and Intervenor in this MDL Proceeding, this 14th day of May, 2001:

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